

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

FERNANDO ROY GUANILL,

Petitioner,

No. C 11-4531 PJH (PR)

vs.

ORDER OF DISMISSAL

SAN FRANCISCO ADULT PROBATION
DEPARTMENT EMPLOYEES,

Respondents.

This is a habeas case brought pro se by a prisoner at the San Francisco County Jail. The petition involves a charge that he violated state probation.

In its initial review order the court noted that petitioner had not completed the portion of the form petition that asks how he presented his claims to the state courts, so had failed to make the necessary allegation that he had exhausted state court remedies. See *Cartwright v. Cupp*, 650 F.2d 1103, 1104 (9th Cir. 1981) (petitioner must plead exhaustion); see also *Carden v. Montana*, 626 F.2d 82, 83-84 & n.1 (9th Cir. 1980) (principles of federalism and comity require exhaustion of petitions brought under 28 U.S.C. § 2241).

The petition was dismissed with leave to file an amended petition that pleaded facts showing exhaustion.


Petitioner has written a letter to the court which he clearly intends to be his amendment. In it he alleges that he wrote to two superior court judges about his claim, and provides copies.

A habeas petitioner who is a state prisoner must exhaust his state judicial remedies by presenting his claims to the highest state court available. See 28 U.S.C. § 2254(b), (c); *Rose v. Lundy*, 455 U.S. 509, 515-16 (1982). Even if the court were to treat the letter as an

1 amended petition, and overlook its various deficiencies in that role, it does not allege that
2 petitioner presented his claim to the highest state court available, the Supreme Court of
3 California. Because petitioner has not pleaded complete exhaustion, this petition is
4 **DISMISSED** without prejudice to filing a new petition after exhaustion has been completed.

5 **IT IS SO ORDERED.**

6 Dated: April 9, 2012.



PHYLLIS J. HAMILTON
United States District Judge